

REMARKS

Status of the Application

Claims 1-19 are all the claims pending in this application. Claims 1, 3-7, 9, and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Deverre (US Patent 7,131,958) in view of newly cited, but previously made of record, Dracker (US Patent 5,356,373). Claims 2, 11, 12, 18, and 19 are rejected under 35 U.S.C. §103(a) as being unpatentable over Deverre in view of newly cited, but previously made of record Dracker as applied to claim 1 above, and further in view of Seddon et al. (US Patent 6,024,731). Claims 13-16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over newly cited, but previously made of record Dracker in view of Seddon. Claim 8 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Deverre and newly cited, but previously made of record Dracker as applied to claim 7 above, and further in view of Darling, Jr. (US Patent 6,213,986). Claim 10 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Deverre and newly cited, but previously made of record Dracker as applied to claim 1 above, and further in view of Van Der Heiden et al. (US Patent 5,879,318).

By this Amendment, Applicants hereby amend claims 1-9, 13, 16 and 17, and cancels claims 11, 14 and 18.

Claim Rejections – 35 U.S.C. § 103

Claims 1, 3-7, 9, and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Deverre (US Patent 7,131,958) in view of newly cited, but previously made of record, Dracker (US Patent 5,356,373).

Claims 2, 11, 12, 18, and 19 are rejected under 35 U.S.C. §103(a) as being unpatentable over Deverre in view of newly cited, but previously made of record Dracker as applied to claim 1 above, and further in view of Seddon et al. (US Patent 6,024,731).

Applicants hereby incorporate the subject matter of claim 11 into claim 1. Analogously, Applicants hereby incorporate the subject matter of claim 18 into claim 17. Accordingly, because the subject matter of claims 11 and 18 were not rejected over the Examiner's proposed combination of Deverre and Dracker, withdrawal of the rejection over the proposed combination of Deverre and Dracker is respectfully requested. However, the Examiner has alleged that the subject matter of claims 11 and 18 would be unpatentable over a potential combination of Deverre, Dracker and Seddon. Applicants respectfully disagree.

Newly cited Dracker discloses a flexible collection bag attached to the needle, wherein a vacuum is applied to the flexible collection bag, further providing suction through the needle (col. 4, l. 45-53). However, amended claim 1 recites that "said suction means comprises a vacuum bottle that simultaneously forms a collection vessel." In other words, according to claim 1, suction occurs automatically because of the vacuum bottle. On the other hand, a specific action (i.e., applying a vacuum to the flexible collection bag) is required on the Dracker system to provide the suction means recited in claim 1.

As argued in the pre-appeal brief request for review submitted February 18, 2009, Applicants submit that it would not be obvious for one of ordinary skill in the art to replace the active suction device (using an applied vacuum) disclosed in Dracker (or a simple syringe, which also requires an applied vacuum to create the suction), with a Redon-type bottle as disclosed by the passive device disclosed by Seddon, which is related to a wound drainage system.

In the Response to Arguments found on page 2 of the instant Office Action, the Examiner argues that Seddon is an active system, and disagrees that the vacuum bottles referenced in Seddon have no “accelerating” effect. Rather, the Examiner states that suction would necessarily result in quicker removal of a fluid when compared to a system that does not use suction, such as Deverre which uses gravity. However, the Examiner is not correct on this point.

The Examiner would be correct if the Examiner had compared a device with suction to a device without suction in the same application (e.g., blood collection). But, the Examiner’s statement it is not true when comparing the device in Deverre with the device in Seddon.

In a blood collection device, the blood flows always much quicker out of the body than in a wound drainage system. Even without suction, as in Deverre, blood flows rather quickly out of the veins (in particular due to pressure provided in the subject’s body), and the blood collection is done in a short period of time (several minutes). According to wound drainage systems, however, the object is to remove the fluids which appear at a wound site over several days. Without suction, these fluids would remain inside the wound, and the suction is only provided to remove these fluids from the wound. Collection of these fluids is not desired to be performed as quickly as possible, and in reality, the suction should be as low as possible.

The use of the vacuum bottle in a wound drainage system (slowly collecting fluids which otherwise would remain in the wound) is thus completely opposite from the use of suction in a blood collection system (accelerating the blood collection to improve quantity and quality of the collected blood).

Accordingly, one of ordinary skill in the art, trying to improve a blood collection system, would not consider using the Redon-type vacuum bottle disclosed by Seddon, which relates to wound drainage. Thus, although several suction systems are known which may be used for

blood collection (e.g., a syringe or Dracker's flexible bag, submitted to vacuum), each of these systems require a specific application of a vacuum to provide said suction. However, the use of a Redon-type vacuum bottle has never been considered in connection with blood collection systems due to its normal use of minimal vacuum to provide wound drainage over several days time.

Therefore, for the reasons set forth above, Applicants submit the Examiner's proposed combination of references would not render independent claims 1 and 17 obvious, and further submit that independent claims 1 and 17 are patentable over the Examiner's proposed combination of references.

Claims 2-7, 9, 12 and 19 are patentable at least by virtue of their respective dependencies.

Claims 13-16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over newly cited, but previously made of record Dracker in view of Seddon.

Claim 13 has been amended to incorporate the subject matter of claim 14, and recites elements similar to independent claims 1 and 17. Therefore, for reasons analogous to those presented above with regard to independent claims 1 and 17, independent claim 13 is patentable over the applied art.

Claims 15 and 16 depend from claim 13 and are patentable at least by virtue of their dependency.

Claim 8 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Deverre and newly cited, but previously made of record Dracker as applied to claim 7 above, and further in view of Darling, Jr. (US Patent 6,213,986).

Claim 8 depends from amended claim 1. Because the Examiner's proposed combination of Deverre and Dracker fails to render claim 1 obvious, and because Darling fails to cure the deficiencies noted with respect to amended claim 1, claim 8 is patentable at least by virtue of its dependency from amended claim 1.

Claim 10 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Deverre and newly cited, but previously made of record Dracker as applied to claim 1 above, and further in view of Van Der Heiden et al. (US Patent 5,879,318).

Claim 10 depends from amended claim 1. Because the Examiner's proposed combination of Deverre and Dracker fails to render claim 1 obvious, and because Van Der Heiden fails to cure the deficiencies noted with respect to amended claim 1, claim 10 is patentable at least by virtue of its dependency from amended claim 1.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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